

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT APPEAL No.1352 of 2005

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J U D G M E N T: (Per the Hon'ble Sri Justice J. Chelameswar)

Aggrieved by the order, dated 05-07-2005, in W.P.No.12504 of 2005, the third respondent therein preferred the present writ appeal.

The facts in a nutshell are as follows:

The respondents 1 and 2 issued a tender notification, dated 02-03-2005, inviting tenders from Organisations/Societies/Firms having "labour license" for execution of sanitation work at Area Hospital, Nampally, Hyderabad, for a period of sixty six days from 01-04-2005 to 30-09-2005. The appellant, the third respondent along with other organizations responded to the said notification. The respondents 1 and 2 eventually awarded the contractual work in favour of the appellant herein being the lowest tenderer. Challenging the same, the third respondent filed W.P.No.12504 of 2005 on the ground that the appellant does not possess "Labour License" as prescribed under the tender notification, dated 02-03-2005.

The learned Single Judge by the order under appeal holding that the requirement of possessing such license is one of the eligibility criterion for participation as stipulated under the tender notification, dated 02-03-2005, and that the appellant does not possess the license under Section 12 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act"), set aside the award issued in favour of the appellant and accordingly disposed of

the writ petition.

The learned counsel for the appellant contends that the requirement of obtaining licence is not absolute requirement under the Act and that as per Section 12(1) of the Act, prohibition is only against those contractors to whom the Act applies and that the prohibition is that such contractors shall not undertake or execute any work through contract labour except under and in accordance with a licence issued by the licensing officer.

To decide the question as to whether the Act applies to particular contractors prescribed under the Act or not, it would be appropriate to refer the relevant provisions of the Act.

Section 12 (1) of the Act, which deals with licensing of contractors, reads as hereunder:

“With effect from such date as the appropriate Government may, by notification in the Official gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing Officer.”

Section 1 (4) of the Act, which deals with the applicability of the Act, reads as hereunder:

“It applies:-

- a. *to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour:*
- b. *to every contractor to who employes or who employed, on any day of the preceding twelve months twenty or more workmen.”*

From a perusal of the above provisions, it appears that this Act is made applicable to all the establishments in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.

The expression “Establishment” is defined under Section 2 (e) of the Act, which reads as hereunder:

“ ‘establishment’ means –

- i. *any office or department of the Government*
or a local authority, or
- ii. *any place where any industry, trade,*
business, manufacture or occupation is carried on.”

The expression “Contractor” is defined under Section 2 (c) of the Act, which reads as hereunder:

“ ‘Contractor’, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.”

Prohibition or regulation contained under Section 12 (1) of the Act not to undertake or execute any work through contract labour is only against the contractors under the Act and it does not deal with the establishments. Whether the contractor is required to obtain a license or not depends on the fact whether the contractor is employing or did employ twenty or more employees on any day of the preceding twelve months with reference to the relevant date.

It is the assertion of the appellant is that he is required to employ only fourteen employees insofar as the work related to the contract-in-question is concerned, therefore he need not obtain a license under Section 12 of the Act. However, we are of the opinion that it is an irrelevant factor that the petitioner has to employ only four persons since in the tender notification, dated 02-03-2005, it is clearly specified that only those contractors who are licensed under Section 12 (1) of the Act shall be considered for awarding the tender which is the eligibility criterion. As the appellant does not possess the license under Section 12 (1) of the Act as stipulated in the tender notification, dated 02-03-2005, he is not qualified to participate in the process as per the names chosen by the employer.

We do not see any reason to interfere with the order under appeal. The writ appeal is accordingly dismissed, at the admission stage. No costs.

(J.CHELAMESWAR, J)

(M.VENKATESWARA REDDY,J)

Date:27-07-2005

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THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT APPEAL No.1352 of 2005

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Date: 27-07-2005

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Between:

M/s Swaraj Security and Sanitation. .. Appellant

AND

The Andhra Pradesh Vaidya Vidhana Parishad,

Rep. by its Commissioner, and two others. ..Respondents

Counsel for the appellant: Mr. A. Ravi Shankar.

Counsel for the respondent Nos.1 and 2: Mr.S.A. Waheed Shabaz,
Standing Counsel.

Counsel for the respondent No.3: Mr. G. Vasantha Rayudu.